

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1076 of 1998

with

CIVIL REVISION APPLICATION No 382 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

VINODBHAI VALJIBHAI CHAUHAN

Versus

BHARATI AMBALAL GOHIL

Appearance:

1. Civil Revision Application No. 1076 of 1998
MR YN OZA for Petitioner
MR AY KOGJE for Respondent No. 1
2. Civil Revision ApplicationNo 382 of 1999
MR YN OZA for Petitioner
MR AY KOGJE for Respondent No. 1

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 13/09/1999

COMMON ORAL JUDGEMENT :

Civil Revision Application No.1076 of 1998 has been filed against order dated 28th January 1998 passed by the court concerned on the application, exh.16 in Hindu Marriage Petition No.388 of 1996, whereby the husband petitioner was directed to pay a sum of Rs.1100/-

p.m to the respondent wife and daughter Hetal every month pendente lite from the date of filing of the petition. Another Revision Application No.382 of 1999 has been filed by the wife for quashing and setting aside order dated 13.1.1999 passed on the application exh.48 in Hindu Marriage Petition No.388 of 1996 and to direct the respondent husband to deposit the amount of Rs.36,300/being balance amount of interim alimony and the costs required to be paid by the respondent husband to the petitioner as per order dated 20.1.1998.

2. Since both the Revision Applications are inter connected between the same parties, they are being disposed of by this common judgement. The list has been revised. Yet none is present for either side. The wife moved an application exh.16 under sec.24 of the Hindu Marriage Act for the interim maintenance (Rs.3000 + Rs.2000 = Rs.5000/-) pendente lite and legal expenses of Rs.5000/-. The trial court by order dated 20.1.1998 directed the husband to pay a sum of Rs.1100/to the wife and daughter from the date of filing of the petition and the husband was also directed to pay an amount of Rs.2500/- towards fee and legal expenses within ten weeks from the date of the order. This court by order dated 8th July 1999 stayed operation of the impugned order subject to the condition that the petitioner will continue to pay Rs.600/- per month to the respondent for her maintenance and that of her daughter, in compliance of the order passed by the learned Metropolitan Magistrate, in proceedings under sec.125 of the Code of Criminal Procedure ("the Code" for brevity). It was directed by this Court that in case any amount is already deposited by the husband in compliance with the order dated 22nd March 1999, the respondent will be at liberty to withdraw the amount to the extent as aforesaid as the wife was entitled to receive the amount at the rate of Rs.600/- as stated above only and the remaining amount was directed to be deposited with the court below.

3. The trial court has considered the income of the husband on the basis of various documentary evidence and affidavits filed by the parties and found that the income of the petitioner was Rs.5000/- per month on the ground that the husband runs a music party in the name and style of "Vinodkumar & Party" and he also owns Shri Ram Pan Parlour at Nava Vadaj, Near Bhavsar Hotel. It cannot be said that a person carrying on business of music party has a permanent monthly source of income. No doubt, it is a source, but he keeps earning only during special occasions/ events, such as marriage season, etc. and this business does not run throughout the year. Even

then this court is not to analyse or appreciate material or evidence on record on the basis of which findings have been recorded by the court below. But the wife has already been granted maintenance of Rs.600/- (Rs.350 + Rs.250), which amount is said to be meagre amount for maintenance. As the complete evidence has been examined and considered regarding income of the parties concerned and the learned Metropolitan Magistrate came to the conclusion that the wife and daughter are entitled for the amount of Rs.600 per month in the proceedings under sec.125 of the Code. No doubt that fact, findings and evidence of that case have not been considered, but only it is observed that the husband has also been directed to pay an amount of Rs.600/- to wife and daughter by the criminal court and that amount is not sufficient. As the wife is not entitled for separate maintenance in different proceedings, i.e. in criminal proceedings, civil proceedings under sec.24 of Hindu Marriage Act, civil proceedings under the Hindu Adoption and Maintenance Act, the Court is required to determine an amount to be sufficient for maintenance. In this case it appears that the trial court was in its opinion that the amount awarded by the criminal court was insufficient, hence the amount of Rs.1100/- was awarded as interim maintenance. I think that amount would be sufficient for the wife and the daughter. The trial court has not made any observation as required under sec.127(4) Cr.P.C. that the wife and daughter will also be paid the maintenance awarded under sec.125 of the Code of Criminal Procedure. As both wife and daughter would be entitled to maintenance allowed by trial court and order allowing maintenance by criminal court will merge in the order of the trial court and both wife and daughter would not be paid separate maintenance allowed by the criminal court till the decision of the Hindu Marriage Petition No.388 of 1996.

4. The wife along with the daughter may approach the concerned court for the balance outstanding amount of maintenance. If such an application is moved, the trial court will decide the same in accordance with law.

5. Both the Revision Applications are disposed of with the aforesaid observations. Rule is discharged. Interim relief is vacated. No order as to costs.

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